

§516.60

32 CFR Ch. V (7–1–08 Edition)

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide commanders, contracting officers, Procurement Fraud Advisers, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DOD mission of fraud or corruption that relates to DOD procurement activities. This information will be obtained from individuals such as the head of the contracting agency, appropriate commanders, and staff agencies. Some examples of adverse impact on a DOD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisers the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure the following:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PFI Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure the following:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts are reported promptly to the supporting USACIDC element and the Procurement Fraud Division.

(2) Information provided includes reports by contracting officers under DFARS 209.406–3.

§516.60 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at commands with procurement advisory responsibility will appoint an attorney as a Procurement Fraud Adviser (PFA) to manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program and coordination of remedies within their organizations.

(e) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(f) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

§516.61 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in figure D–1, appendix G, to this part. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph b of this section. Reports should be submitted if

Department of the Army, DoD

§516.61

there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by FAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving the Army. To facilitate filing, a separate sheet should be used for each case reported. These reports will provide a succinct summary of the following available information:

- (1) Name and address of contractor.
- (2) Known subsidiaries of parent firms.
- (3) Contracts involved in potential fraud.
- (4) Nature of potential fraud.
- (5) Summary of pertinent facts.
- (6) Possible damages.
- (7) Investigative agencies involved.
- (8) Local PFAs (name and phone numbers).

Any of the above categories that cannot be completed will be annotated as "unknown at present."

(c) When a report is required by DFARS or is requested by PFD, the provisions of DFARS 209.406-3 (48 CFR 209.406-3) will be followed. That paragraph provides the basic content and format for PFI reports.

(d) All personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are completed in a timely and thorough manner. Requests for assistance from federal prosecutors should be processed through the local PFA whenever possible. Requests for federal investigators will be processed through the supporting USACIDC and the PFA will be notified. When the conduct of criminal investigations and prosecutions conflict with the progress of procurements, reasonable deference will be given to criminal investigators and prosecutors whenever possible. Any serious conflict that cannot be resolved at a local level will be immediately reported to the PFI Coordinator or PFD for action.

(e) PFI Coordinators and PFAs may request access to information obtained during criminal investigations that is not protected by Fed. R. Crim. P. 6(e) and use this information to assist them in taking appropriate administrative,

contractual, and civil remedies. Requests for this information should be made directly to the appropriate federal investigative agency. The investigative organization may withhold requested information if release would compromise an investigation. Difficulties in obtaining information which cannot be resolved locally will be referred to PFD for appropriate action.

(f) USACIDC will notify, in writing, local PFAs as well as PFD within 30 days, of initiation of a significant investigation of fraud or corruption related to Army procurement activities. Such notification will include the following:

- (1) Case title.
- (2) USACIDC Report of Investigation number.
- (3) Responsible investigative agency or agencies.
- (4) Office of primary responsibility.
- (5) Date opened.
- (6) Summary of facts.
- (7) Suspected offense.

(g) The transmission of the information in f above may be delayed if the Commanding General, USACIDC, or the head of another DOD criminal investigation organization determines the transmission would compromise the success of any case or its prosecution. The prosecutive authorities dealing with the case will be consulted, when appropriate, in making such determinations.

(h) USACIDC will obtain the following information at the earliest possible point in an investigation of fraud or corruption that relates to DOD procurement activities, whenever possible without reliance on grand jury subpoenas:

- (1) The individuals suspected to be responsible.
- (2) The suspected firm's organizational structure.
- (3) The firm's financial and contract history.
- (4) The firm's organizational documents and records.
- (5) Statements of witnesses.
- (6) Monetary loss to the government.
- (7) Other relevant information.

This information will be provided to PFD or other cognizant DOD centralized organization.

§ 516.62

(i) PFD will provide written notification to the Defense Investigative Service of all suspension or debarment actions taken by the Army.

§ 516.62 PFD and HQ USACIDC coordination.

PFD and HQ USACIDC will coordinate as follows:

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DOD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DOD procurement activities.

(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) USACIDC will maintain liaison with USACIDC and other DOD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

§ 516.63 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to accomplish the following:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

32 CFR Ch. V (7-1-08 Edition)

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DOD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

§ 516.64 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 209.406-3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at figure H-2, appendix G, to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of appendix D to this part.

(c) A comprehensive remedies plan will include at a minimum the following information and considerations:

(1) Summary of allegations and investigative results.